IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., and JILL MEADOWS. M.D., Petitioners, v. TERRY E. BRANSTAD ex rel. STATE OF IOWA and IOWA BOARD OF MEDICINE, Respondents.	Equity Case No. _____ BRIEF IN SUPPORT OF PETITIONERS' MOTION FOR TEMPORARY INJUNCTIVE RELIEF

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COME NOW Petitioners, Planned Parenthood of the Heartland, Inc. ("PPH") and Jill Meadows, M.D., and for their Motion for Temporary Injunctive Relief, pursuant to Iowa R. Civ. P. 1.1502, state:

INTRODUCTION

Absent immediate relief from this Court, women seeking abortion in Iowa will face severe and unconstitutional restrictions, due to the enactment of Section 1 of Senate File 471 ("the Act"), which passed the legislature on April 18, 2017, and was "deemed of immediate importance" so that it becomes effective immediately upon Governor Branstad's signature on May 5, 2017.

For over 40 years, Iowa women who faced an unwanted pregnancy or a medical crisis involving their pregnancy have been able to determine for themselves how much time they need to think through their options. And those who are certain in their decision to terminate that pregnancy have been able to do so as soon as they can schedule an appointment at a health center and go through the informed consent and medical screening process. The Act would eliminate this option, and instead force all women, regardless of how certain they are, to make an additional and medically unnecessary trip to a health center at least 72 hours before they can obtain an abortion, at which they must have an ultrasound and be given certain state-mandated information intended to promote alternatives to abortion. S.F. 471, § 1 (2017) (to be codified at Iowa Code § 146A.1(1)).[1]

These needless and extremely onerous requirements are among the strictest in the nation. Every woman seeking an abortion will have to make two trips and wait through the state-mandated delay—regardless of the distance she must travel to reach her

[1] The Act contains an extremely narrow medical exception to the 72-hour delay requirement, as explained below in Part B, Factual Background.

provider, her ability to make an additional trip, her own medical needs, her judgment, her doctor's judgment, whether she is the victim or sexual assault or intimate partner violence, or her individual life circumstances. By subjecting all women seeking abortion to both a 72-hour mandatory delay and an additional trip requirement—a burden placed on patients seeking no other medical procedure in Iowa—the Act can only serve to deter women from obtaining an abortion, and to stigmatize, punish, and discriminate against those who do. It will also needlessly expose women to increased medical risk, because abortion is safest earliest in pregnancy. The Act, therefore, violates rights guaranteed to Iowa women by the Iowa Constitution.

For these reasons, and to protect Petitioners' patients while this case proceeds, Petitioners request that the Act be temporarily enjoined pending resolution of Petitioners' legal claims.

FACTUAL BACKGROUND

A. Provision of Abortion Services Prior to the Act

PPH provides a wide range of healthcare at its Iowa health centers, including well-women exams, cancer screenings, testing and treatment for sexually transmitted infections ("STIs"), a range of birth control options including long-acting reversible contraception or LARC, transgender healthcare, and medication and surgical abortion. Aff. of Jill Meadows, M.D. ("Meadows Aff.") ¶ 4, attached hereto as Ex. 1. PPH provides both surgical and medication abortion at two clinics in Iowa, in Des Moines and Iowa City. Id. Another six of PPH's health centers only provide medication abortion, which is an early method of ending a pregnancy using pills rather than surgery. Id. ¶ 5. In Ames, an in-person physician provides this care. Id. Since 2008, PPH has also used

telemedicine to provide medication abortion at a number of health centers. Id.[2] PPH currently offers medication abortion using telemedicine at its health centers in Burlington, Cedar Falls, Council Bluffs, Bettendorf (Quad Cities), and Sioux City. Id.[3] Over the past year (April 1, 2016 to March 31, 2017), PPH provided over 2,100 medication abortions and over 1,200 surgical abortions in Iowa. Id. ¶ 6.

Prior to the Act, PPH always obtained the informed consent of their patients for all of their care, as required by good medical practice and Iowa law. See, e.g., Estate of Anderson ex rel. Herren v. Iowa Dermatology Clinic, PLC, 819 N.W.2d 408, 416 (Iowa 2012); Morgan v. Olds, 417 N.W.2d 232, 235 (Iowa Ct. App. 1987) (citing Pauscher v. Iowa Methodist Medical Center, 408 N.W.2d 355, 358 (Iowa 1987)).[4] Informed consent includes disclosing "information material to a patient's decision to consent to medical treatment," Estate of Anderson ex rel. Herren, 819 N.W.2d at 416, and "all material risks involved in the procedure," Doe v. Johnston, 476 N.W.2d 28, 31 (Iowa 1991). However, prior to the Act, Iowa did not require a mandatory delay and additional clinic trip for *any* medical procedure, including abortion. See Meadows Aff. ¶¶ 8–9 (explaining PPH's same-day informed consent and screening process).

The overwhelming majority of patients are certain in their decision to terminate their pregnancy by the time they arrive at their appointment. Id. ¶ 10; Aff. of Daniel Grossman, M.D. ("Grossman Aff.") ¶ 26, attached hereto as Ex. 2. PPH uses a

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[2] The Iowa Supreme Court recently described PPH's use of telemedicine in detail in Planned Parenthood of Heartland, Inc. v. Iowa Bd. of Med., 865 N.W.2d 252, 255 (Iowa 2015), and recognized that it had been shown to expand access while still protecting patient safety.

[3] Upon information and belief, there is only one other abortion provider in the state, the Emma Goldman Clinic in Iowa City.

[4] Iowa law also requires informed consent for procedures performed via telemedicine, such as medication abortions. Iowa Admin. Code 653-13.11(147, 148, 272C).

comprehensive informed consent process, which provides women with all information necessary for them to fully understand the risks and benefits of abortion, and the alternatives to abortion, including carrying the pregnancy to term. Meadows Aff. ¶ 8. PPH gives its patients multiple opportunities to ask questions and discuss any concerns with their physician prior to an abortion. Id. PPH's informed consent thus allows a woman, after considering this information, to give consent that is informed and voluntary. Id. And if a patient is not sure about her decision, PPH advises her to take more time to come to a clear decision before having an abortion. Id. ¶ 11.

Consistent with Iowa law, see Iowa Code § 146A.1 (July 2015), and in accordance with PPH's medical guidelines, PPH also provides an ultrasound to every woman seeking an abortion and gives her the opportunity to view the ultrasound, if she chooses. Meadows Aff. ¶ 9. Most patients do not choose to view the ultrasound, which is consistent with research conducted elsewhere. Id.; Grossman Aff. ¶ 32.

B. Provisions of the Act

The Act drastically alters the informed consent process for abortion patients, requiring them to make two or more trips to the health center and be subjected to an extreme mandatory delay. Specifically, the Act requires "[a] physician performing an abortion" to "obtain written certification from the pregnant woman" that she has undergone an ultrasound and received certain information "at least seventy-two hours prior to performing the abortion." S.F. 471, § 1 (2017) (to be codified at Iowa Code § 146A.1(1)).[5] The woman must be given the option to view the ultrasound and/or listen to

[5] To add the 72-hour requirement to an unrelated bill, the House voted to suspend the rules on germaneness. See James Q. Lynch, Iowa House Debates 20-week Abortion Ban, The Gazette (April 4, 2017) http://www.thegazette.com/subject/news/government/iowa-

a description of the fetus based on the ultrasound image and the fetus's heartbeat. Id. (to be codified at Iowa Code § 146A.1(1)(a)–(c)).

In addition, the Act mandates that a woman be provided certain information, "based upon the materials [to be] developed by the department of public health," including: information about "options relative to a pregnancy," as well as "[t]he indicators, contra-indicators, and risk factors, including any physical, psychological, or situational factors related to the abortion in light of the woman's medical history and medical condition." Id. (to be codified at Iowa Code § 146A.1(1)(d)(1)(a), (b)). The Act requires these materials to contain various information, including "[m]aterials that encourage consideration of placement for adoption." Id. (to be codified at Iowa Code § 146A.1(1)(d)(2)). However, the Act does not provide a date by which the materials must be developed. Given the Act's immediate effective date, upon learning the Governor intends to sign the Act into law on May 5, Petitioners requested the materials from the department of public health, but have not received a response.[6] See Ex. A-2 to Petition for Declaratory Judgement and Injunctive Relief.

The Act does not include a general health exception, nor does it include any exceptions for women with nonviable fetuses, women who are the victims of sexual assault or intimate partner violence, or women who have to travel hundreds of miles to reach the nearest clinic where they can receive care. It provides only extremely narrow medical exceptions for: "[a]n abortion performed to save the life of a pregnant woman";

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house-debates-20-week-abortion-ban-20170404.

[6] The Board of Medicine also has yet to promulgate rules to administer the Act, as required by S.F. 471, § 1 (2017) (to be codified at Iowa Code § 146A.1(5)).

"[a]n abortion performed in a medical emergency"[7]; and "[t]he performance of a medical procedure by a physician that in the physician's reasonable medical judgment is designed to or intended to prevent the death or to preserve the life of the pregnant woman." Id. (to be codified at Iowa Code § 146A.1(2)(a)–(c)).

Physicians who violate the Act are subject to licensee discipline. Id. (to be codified at Iowa Code § 146A.1(3)); Iowa Code § 148.6 (2017).

C. Effect of the Act on Women Seeking Abortions in Iowa

The Act's unnecessary and extremely onerous requirements will irreparably harm women seeking abortions in Iowa. Women decide to terminate a pregnancy for a variety of reasons, including familial, medical, financial, and personal reasons. Grossman Aff. ¶ 7. Approximately one in three women in this country will have an abortion by age forty-five. Fifty-nine percent of women who seek abortions are mothers who have decided that they cannot parent another child at this time, and 66% plan to have children when they are older, financially able to provide necessities for them, and/or in a supportive relationship with a partner so that their children will have two parents. Id.

Prior to the Act, women already faced many obstacles in accessing an abortion in Iowa due, in part, to the fact that so few physicians offer this care and Iowa law includes a medically unnecessary prohibition on other licensed clinicians' doing so. Id. ¶¶ 11–13. The 72-hour mandatory delay and additional trip requirement will significantly

[7] A medical emergency is narrowly defined as "a situation in which an abortion is performed to preserve the life of the pregnancy woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman." S.F. 471 § 2 (2017) (to be codified at Iowa Code § 146B.1(6)).

compound these obstacles. To begin with, to make the extra trip, women will have to take far more time off school, work, and/or home, which would be extremely difficult for many of them to do. Many will lose wages, and/or have to pay for child-care. Women will also have to pay for additional travel costs, including potentially hotel costs for several nights if they are unable to make two separate trips to the health center at least 72 hours apart. See generally Aff. of Jane Collins ("Collins Aff."), attached hereto as Ex. 3; see also Meadows Aff. ¶ 16; Grossman Aff. ¶¶ 39 n. 29, 41–42.

Women and adolescents with abusive partners or family members will face particular obstacles in taking these additional steps. See Aff. of Lenore Walker ("Walker Aff.") ¶¶ 19–25, attached hereto as Ex. 4 (detailing, for example, how abusive partners exercise monitoring and control financially, emotionally, and logistically); see also Brief of Am. Cur. on Behalf of Iowa Coalition Against Domestic Violence, Et Al. in Supp. of Petitioners-Appellants, Planned Parenthood of the Heartland, Supreme Court No. 14-1415 at 24 (Iowa filed Nov. 10, 2014), available at https://nwlc.org/wp-content/uploads/2015/08/telemedicine_brief_formatted_11_12_3.pdf ("Am. Cur. Br. of Iowa Coalition Against Domestic Violence") (same).

Moreover, because PPH's health centers are already stretched thin, patients will be delayed well beyond 72 hours, just on PPH's end (and not taking into account patients' own scheduling constraints). Due to limited clinician availability and the fact that PPH is restricted by other laws from expanding access to care, PPH is only able to schedule abortion patients 1–2 days a week at many of its health centers, and even less frequently at the others. Meadows Aff. ¶ 26. As a result, staff already have to schedule patients anywhere from a week to three weeks out or even longer. Id. If PPH has to

schedule an extra appointment for each patient, this is likely to push patients out significantly farther. Id. ¶ 27. The mandatory delay and additional-trip requirement will thus substantially delay women seeking abortion.[8]

The delays caused by the Act will harm women's health. While abortion is an extremely safe procedure, the later an abortion takes place in pregnancy, the greater the medical risks for the woman, as well as the cost. Meadows Aff. ¶ 15, 17; Grossman Aff. ¶ 9. (Those increased costs will come on top of additional clinic-related costs from extra appointments. Meadows Aff. ¶ 17.) Additionally, the Act will prevent a significant number of women from obtaining a medication abortion because it will push them past the gestational age at which this method is available (i.e., ten weeks from the first day of the woman's last menstrual period ("LMP")). Meadows Aff. ¶¶ 21–22. Indeed, last year approximately 30% of PPH's medication abortion patients—over 600 patients—received a medication abortion in their ninth or tenth week of pregnancy. Id. ¶ 18.

By depriving many women of the option of medication abortion, the Act will harm them because many women strongly prefer it over surgical abortion, and because, for some women, this method is medically indicated. Id. ¶ 19; Grossman Aff. ¶¶ 20–22. For example, for sexual assault survivors, medication abortion may feel less invasive and,

[8] Indeed, this is exactly what occurred when Arkansas (where PPH previously provided) enacted a two-trip, 48-hour waiting period (prior to that, it had required a shorter waiting period and allowed the first interaction to be over the phone). Meadows Aff. ¶ 25. This change imposed serious burdens on PPH's patients' ability to timely access an abortion in Arkansas, with some abortion patients being forced to wait a week or longer to complete the process and others being turned away altogether. Id. Similarly, one recent study looking at Utah's 72-hour waiting period requirement found that patients were delayed an average of eight days, generally due to logistical reasons (as opposed to needing more time to come to a final decision). Grossman Aff. ¶ 37. Here too, PPH would work to reduce burdens on Iowa patients, but would be limited by, inter alia, the difficulty of hiring staff given the targeted harassment of abortion providers. Meadow Aff. ¶ 26.

for that reason, may be far easier to undergo. Grossman Aff. ¶ 21. For those women who can still access medication abortion, forced delay is also harmful to their health because medication abortion is more effective the earlier it is initiated. Meadows Aff. ¶ 21.

By making it impossible for many women to have a medication abortion, the Act will often force them to travel significantly farther to get a surgical abortion. As stated above, PPH only provides surgical abortion at two of its health centers, in Des Moines and Iowa City; medication abortion is available at six additional health centers, which are spread across the state in Ames, Burlington, Cedar Falls, Council Bluffs, Bettendorf (Quad Cities), and Sioux City. Id. ¶¶ 4–5. Thus, for example, a patient in Sioux City who loses her chance to have a local medication abortion via telemedicine will have to travel approximately 400 miles round-trip to Des Moines, and a patient in Council Bluffs will have to travel over 200 miles.

For other women seeking a surgical abortion later in pregnancy, the mandatory delay will push them past the gestational age at which surgical abortions are available in the state. In the past year, PPH provided abortions to thirty patients at its Des Moines clinic who were within two weeks of the cut-off there, and seventeen patients at its Iowa City health center who were within two weeks of the cut-off there. Meadows Aff. ¶ 24. These patients will either have to travel out of state to obtain an abortion, or, if they do not have the resources to do so, carry a pregnancy to term.

Research has shown that imposing an additional-trip requirement on patients seeking an abortion causes them severe stress. It also poses a very real threat to a woman's confidentiality and privacy by increasing the risk that partners, family members, employers, co-workers, or others will discover that she is having an abortion.

Meadows Aff. ¶¶ 16, 23; Grossman Aff. ¶ 13 n. 14. Many patients are quite anxious to end their pregnancy as soon as possible—to conceal an unwanted pregnancy from an abusive or controlling partner or family member, or from others who would disapprove or shame her, or to terminate a debilitating pregnancy, or for some other reason. Meadows Aff. ¶ 23; Grossman Aff. ¶ 40; Walker Aff. ¶ 22.

The mandatory delay and additional trip requirements will pose particular harms to especially vulnerable groups of Iowa women. For example, most of PPH's abortion patients are living at or below 110% of the federal poverty line (meaning, e.g., they make $13,068 or less if single or $17,622 if supporting a child). Meadows Aff. ¶ 16. These women will have the greatest difficulty in rearranging inflexible work schedules at low-wage jobs; arranging and paying for childcare; paying for the travel costs for an additional trip to the clinic; foregoing lost wages for missed work; and paying any additional costs associated with a later procedure. See Collins Aff. ¶¶ 39–44. The process of finding and saving money to pay for additional costs resulting from the Act will likely further delay them, exacerbating the harms associated with delay discussed above. Meadows Aff. ¶ 17; Grossman Aff. ¶¶ 12, 39. For some of these women, the Act will in fact make it impossible for them to terminate their pregnancy. Collins Aff. ¶¶ 39, 45.[9]

Similarly, forcing women whose pregnancies are the result of rape or other violent crimes to comply with the Act's requirements may cause them further psychological harm, and could even prevent them altogether from accessing care (which itself could cause further trauma). Grossman Aff. ¶ 40; Walker Aff. ¶¶ 26–28; see also

[9] The Act's requirements are also likely to be particularly burdensome, if not prohibitive, for minors seeking an abortion without parental involvement, who are already required by Iowa law to navigate a judicial bypass before obtaining care. Iowa Admin. Code 641-89.21(135L).

Am. Cur. Br. of Iowa Coalition Against Domestic Violence at 15 ("Sexual assault survivors in particular may prefer medication abortion. Intimate exams and childbirth can trigger post-traumatic stress in sexual assault survivors."). The Act will also endanger women and adolescents at risk of partner or family abuse by compromising their confidentiality and by making it harder or impossible for them to terminate an unwanted pregnancy. Walker Aff. ¶¶ 19–23, 25. The Act makes no exceptions for these circumstances.

Women with wanted pregnancies who seek abortions to protect their medical well-being will also face grave harms, unless they are at serious risk of losing their lives or impairment of "a major bodily function" (a determination their physician must make knowing she could lose her license if the Board of Medicine disagrees). Meadows Aff. ¶ 29–30; S.F. 471, §§ 1, 2 (2017) (to be codified at Iowa Code §§ 146A.1(2), 146B.1(6) (2017)). The Act will thus impose serious medical risks on women facing one of the numerous complications of pregnancy that threaten a woman's health outside the dangerously narrow confines of the Act's exceptions. Meadows Aff. ¶ 30; Grossman Aff. ¶ 40. And for women who decide to terminate a wanted pregnancy after receiving a diagnosis of a severe fetal anomaly, the mandatory delay and additional-trip requirements are especially cruel, will prolong what is generally an extremely painful experience for patients, and will interfere with physicians' ability to exercise medical judgment and provide compassionate care to these patients. Meadows Aff. ¶ 29; Grossman Aff. ¶ 48.

When legal abortion is unavailable or difficult to access, some women turn to illegal, and unsafe, methods to terminate unwanted pregnancies. Grossman Aff. ¶ 10. Other women, deprived of access to legal abortion, are forced to carry an unwanted

pregnancy to term. Id. These women are exposed to increased risks of death and major complications from childbirth and they and their newborns are at risk of negative health consequences, including reduced use of prenatal care, lower breastfeeding rates, and poor maternal and neonatal outcomes. Id.

Finally, by singling abortion out from all other medical care and imposing a mandatory delay on women seeking this care (indeed, one that is among the most extreme in the country), the Act perpetuates the gender stereotype that women do not understand the nature of the abortion procedure, have not thought carefully about their decision to have an abortion, and are less capable of making an informed decision about their health care than men. Meadows Aff. ¶ 32.[10] The Act thus stigmatizes women seeking abortions and sends the harmful message that they are incompetent decision-makers.

ARGUMENT

A. Standard for Temporary Injunctive Relief

"A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation." Kleman v. Charles City Police Dep't, 373 N.W.2d 90, 95 (Iowa 1985). The status quo "is the last, actual, peaceable, noncontested status which preceded the pending controversy." Kent Prods., Inc. v. Hoegh, 61 N.W.2d 711, 716 (Iowa 1953); see also Nw. Mut. Life Ins. Co. v. Hahn, 713 N.W.2d 709, 711 (Iowa Ct. App. 2006) (same).

A party seeking temporary injunctive relief must establish "(1) an invasion or

[10] The Act (and the stereotype it embodies) is flatly contradicted by evidence about patients' abortion-related decision-making. See Grossman Aff. ¶¶ 26–29 (citing studies indicating that waiting period requirements did not affect patient certainty).

threatened invasion of a right, (2) substantial injury or damages will result unless an injunction is granted, and (3) no adequate legal remedy is available." Opat v. Ludeking, 666 N.W.2d 597, 603–04 (Iowa 2003) (internal quotations omitted). "In deciding whether an injunction should be issued, the court must weigh the relative hardships on the parties by the grant or denial of injunctive relief." Id. Furthermore, "[t]he standards considered in granting temporary injunctions are similar to those for permanent injunctions, except temporary injunctions require a showing of the likelihood of success on the merits instead of actual success." Max 100 L.C. v. Iowa Realty Co., Inc., 621 N.W.2d 178, 181 (Iowa 2001).

For the reasons set forth below, Petitioners meet this standard.[11]

B. Petitioners have established a likelihood of succeeding on their claim that the Act invades a protected constitutional right.

A temporary injunction is warranted in this case because Petitioners have established a likelihood of succeeding on their claims that the 72-hour mandatory delay and additional trip requirements violate PPH's patients' rights to due process and to equal protection under the Iowa Constitution.

i. The Act violates women's due process rights under the Iowa Constitution.

a. Under the Iowa Constitution, abortion is a fundamental right and therefore the Act is subject to strict scrutiny review.

The Iowa Supreme Court has recognized that abortion is a right protected under the Iowa Constitution. Planned Parenthood of Heartland, Inc. v. Iowa Bd. of Med., 865

[11] Enjoining the Act's requirements will maintain the status quo by enabling Petitioners' patients to obtain an abortion, on the same day, after participating in a comprehensive informed consent and medical screening process (which includes the option for them to view their ultrasound).

N.W.2d 252, 263, 269 (Iowa 2015) (striking down under the Iowa Constitution an agency rule restricting the use of telemedicine to provide abortion). In that case, the Court noted that many state courts have afforded this right greater protection under their state constitutions than the "undue burden" standard of protection provided under the U.S. Constitution. Id. at 262 n.2 (citing state supreme court decisions from Alaska, Florida, Minnesota, Montana, and Tennessee). The Court did not reach the question of whether the *Iowa* Constitution affords such heightened protection because the restriction PPH challenged failed the federal standard.

More recently, however, the Court held that the Iowa Constitution guarantees a fundamental right to procreate, because "the due process clause of our constitution exists to prevent unwarranted governmental interferences with personal decisions in life," and that any infringement on this right is subject to strict scrutiny review. McQuistion v. City of Clinton, 872 N.W.2d 817, 833 (Iowa 2015) (citing both state and federal constitutional precedent for this principle); see also Hensler v. City of Davenport, 790 N.W.2d 569, 581 (Iowa 2010) (noting that U.S. Supreme Court has recognized "that personal choice in matters of family life is a fundamental liberty interest," and holding that the right to raise one's child also is a fundamental right under the Iowa Constitution).

Certainly, the decision not to bear a child, no less than the decision to bear a child, merits protection as a deeply "personal choice in matters of family life." Id. Reproductive choice is central to dignity, bodily integrity, and equality, and "implicit in the concept of ordered liberty." King v. State, 818 N.W.2d 1, 26 (Iowa 2012) (internal quotation marks omitted); cf. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 875 (right to abortion is the "right . . . to be free from unwarranted governmental intrusion into matters so

fundamentally affecting a person as the decision whether to bear or beget a child"); Right to Choose v. Byrne, 450 A.2d 925, 934 (N.J. 1982) (holding a woman has a "fundamental right . . . to control her body and destiny. That right encompasses one of the most intimate decisions in human experience, the choice to terminate a pregnancy or bear a child.").

This Court, therefore, should hold that, under the Iowa Constitution, the right to choose abortion is a fundamental right, and therefore, subject to strict scrutiny review.[12] Hensler, 790 N.W.2d at 580; see also State v. Groves, 742 N.W.2d 90, 93 (Iowa 2007); In re JL, 779 N.W.2d 481, 490–91 (Iowa Ct. App. 2009); State v. Jorgenson, 785 N.W.2d 708, 715 (Iowa Ct. App. 2009). A statute reviewed under the strict scrutiny standard, "is not presumed constitutional. Rather, the State carries the burden of showing that the classification is narrowly tailored to serve a compelling government interest." In re Det. of Williams, 628 N.W.2d 447, 452 (Iowa 2001).

b. The Act cannot survive strict scrutiny.

The Act plainly fails the demanding strict scrutiny standard. The Act states a purpose of "enact[ing] policies that protect all unborn life." S.F. 471, § 5 (2017). Statements by lawmakers asserted, more specifically, that the purpose of the Act is to persuade women seeking an abortion to reconsider their decision.[13] However, the

[12] The Iowa Supreme Court in Sanchez v. State, 692 N.W.2d 812, 820 (Iowa 2005), indicated that abortion is a fundamental right.

[13] One House advocate for the amendment, Rep. Skyler Wheeler, stated, "Our hope with this is that people will see what they have in their womb." See Wheeler: Another Week of Intense Debate, nwestiowa.com (Apr. 8, 2017), http://www.nwestiowa.com/opinion/wheeler-another-week-of-intense-debate/article_4236a06e-1b4c-11e7-a4ac-bf48a7276f04.html. Another, Rep. Sandy Salmon, stated "[t]his will shine the light upon what is really inside the womb of the mother," and that the law would "help a woman consider and make a good, educated decision for herself and her baby." O. Kay Henderson, Iowa House GOP Backs Three-

assertion of potential life as *compelling* cannot be reconciled with each individual's "right to define [her] *own* concept of existence, of meaning, of the universe, and of the mystery of human life," which even the U.S. Supreme Court has recognized as being "[a]t the heart of liberty," Casey, 505 U.S. at 851 (emphasis added).[14] Nor can it be reconciled with her protected "interest in *independence* in making certain kinds of important [personal] decisions," Whalen v. Roe, 429 U.S. 589, 599–600 (1977) (emphasis added); see also Gainesville Woman Care, LLC v. State, 210 So. 3d 1243, 1262 (Fla. 2017) ("[S]ocial and moral concerns [including the 'unique potentiality of human life,'] have no place in the concept of informed consent.").

As the Montana Supreme Court recognized in striking down a restriction on abortion, "[i]mplicit in this right of procreative autonomy is a woman's moral right and moral responsibility to decide, up to the point of fetal viability, what her pregnancy demands of her in the context of her individual values, her beliefs as to the sanctity of life, and her personal situation"—*hers* and not the state's. That court further explained that "the State has no more compelling interest or constitutional justification for interfering with the exercise of this right if the woman chooses to terminate her pre-viability pregnancy than it would if she chose to carry the fetus to term." Armstrong v. State, 989 P.2d 364, 377 (Mont. 1999); see also Women of State of Minn. v. Gomez, 542 N.W.2d 17, 31–32 (holding that state interest in potential life did not become compelling

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day Waiting Period for Abortions, RadioIowa (Apr. 4, 2017) http://www.radioiowa.com/2017/04/04/iowa-house-gop-backs-three-day-waiting-period-for-abortions/.

[14] The U.S. Supreme Court has never held such an interest to be compelling. See Gonzales v. Carhart, 550 U.S. 124, 145 (2007) (holding that the government has a "legitimate" and "substantial" interest in preserving and promoting fetal life (citing Casey, 505 U.S. at 846, 876)).

until viability); Planned Parenthood of Middle Tenn. v. Sundquist, 38 S.W.3d 1, 17 (Tenn. 2000), superseded on other grounds by art I, sect. 36 of the Tennessee Constitution (same); Comm. To Defend Reprod. Rights v. Myers, 625 P.2d 779, 796 (Cal. 1981) (concluding that "the asserted state's interest in protecting a nonviable fetus is subordinate to the woman's right of privacy"). This Court should join these other courts in finding that, given the deeply personal nature of the abortion decision, the state cannot have a compelling interest in intruding on that decision before viability.

Moreover, the State cannot establish that the Act advances a compelling interest because, as set forth in Part C, Factual Background, there is no evidence that the Act can persuade women to carry to term or help them "make a good, educated decision" by mandating an additional trip to the health center 72 hours after they have *already*: consulted others, made a considered decision to end their pregnancy, traveled to the clinic, been provided with comprehensive information about their options, been given the option of viewing their ultrasound, and given voluntary and informed consent. Meadows Aff. ¶¶ 2, 8; Grossman Aff. ¶ 5; cf. Gainesville Woman Care, 210 So. 3d at 1260 (finding "that the State failed to provide any compelling reason to enhance the informed consent provision or how the current informed consent provision was failing in some way").

However, even if the State could establish that the Act furthers a compelling interest, it could not show that the Act is *narrowly tailored* to the achievement of that interest. The Act indiscriminately applies to all abortion patients even though the vast majority of these patients are firm in their decisions by the time they reach the health center, and the research reflects that ultrasound viewing and mandatory delay have no effect on that certainty. Grossman Aff. ¶¶ 29–31; see also Varnum v. Brien, 763 N.W.2d

862, 899 (Iowa 2009) (striking statute where reasoning underlying governmental objective "unsupported by reliable scientific studies"). It subjects all these women to delay, increased health risks, costs, stigma, logistical burdens, and severe stress. See Part C, Factual Background; see also Gainesville Woman Care, 201 So. 3d at 1261 (noting that mandatory 24-hour delay may result in delay "considerably more" than required 24 hours and that abortion was the only medical procedure singled out for delay during informed consent process); Sundquist, 38 S.W.3d at 23–24 (citing evidence "that a large majority of women who have endured waiting periods prior to obtaining an abortion have suffered increased stress, nausea and physical discomfort," as well as evidence of "financial and psychological burdens").

The Act also applies in situations of fetal anomaly, rape, incest, and domestic violence, as well as when a patient's health is in danger outside of the Act's narrow exceptions. See Part C, Factual Background; see also Sundquist, 38 S.W.3d at 24 (finding "compelling argument" that Tennessee's two-trip, 48-hour waiting period "is especially problematic for women who suffer from poverty or abusive relationships"); Gainesville Woman Care, 210 So. 3d at 1261 (striking a 24-hour mandatory delay requirement and considering evidence that "requiring a woman to make a second trip increases the likelihood that her choice to terminate her pregnancy will not remain confidential, which is particularly important, as amici assert, in the domestic violence and human trafficking context"); cf. Casey, 505 U.S. at 888–93 (stating Court must not "blind ourselves to the fact that the significant number of women who fear for their safety and the safety of their children are likely to be deterred from procuring an abortion" due to domestic violence and abuse); Planned Parenthood Ark. & E. Okla. v. Jegley, Case No. 4:15-cv-00784-

KGB, 2016 WL 6211310, at *31 (E.D. Ark. Mar. 14, 2016) (considering fact that abortion restriction that would require women to make extra trip to health center to have an abortion applied "equally to victims of rape, incest, other forms of sexual abuse, and domestic violence" when preliminarily enjoining it).

Finally, it hardly can be said that the Act is narrowly tailored when it imposes requirements that are among the strictest in the nation. Indeed, of the states that impose a mandatory delay, the overwhelming majority mandate a 24-hour delay, and even of those, many do not require a second trip. See Counseling and Waiting Periods for Abortion, Guttmacher Inst. (2017) https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion.[15]

For all these reasons, the Act fails strict scrutiny review, and Petitioners are likely to succeed in their claim that it violates their patients' due process right to reproductive freedom.

c. Alternatively, the Act's requirements violate the "undue burden" standard.

In Planned Parenthood of the Heartland, the Court declined to reach the issue of whether the decision to end a pregnancy is protected by strict scrutiny under the Iowa Constitution, but held that, at a minimum, it is a right protected by the "undue burden" standard established by the U.S. Supreme Court. Under this standard, while the State has "'important and legitimate interests in preserving and in protecting the health of the

[15] Indeed, no court—state or federal—has upheld a two-trip, 72-hour mandatory delay restriction. Moreover, the Act lacks the tailoring of Texas' and Virginia's 24-hour mandatory delay laws, which not only require far less delay, but also exempt women traveling more than 100 miles to reach a clinic from the extra trip requirement. See Tex. Health & Safety Code Ann. § 171.012(a)(4); Va. Code Ann. § 18.2-76(B).

pregnant woman' and 'in protecting the potentiality of human life,'" the State may not impose an undue burden on the woman's right to an abortion. Planned Parenthood of the Heartland, 865 N.W.2d at 263 (citing Roe v. Wade, 410 U.S. 113, 162 (1973)). Moreover, any "means chosen by the State to further the interest in potential life must be calculated to *inform* the woman's free choice, *not hinder* it." Casey, 505 U.S. at 877 (emphases added)).[16]

More recently, the U.S. Supreme Court in Whole Woman's Health v. Hellerstedt stressed that the undue burden standard requires a court to balance "the burdens a law imposes on abortion access together with the benefits those laws confer." 136 S. Ct. 2292, 2309 (2016); see also Planned Parenthood of the Heartland, 865 N.W.2d at 268 ("Consistent with United States Supreme Court precedent, we must now weigh the health benefits of [the challenged] rule[s] against the burdens they impose on a woman who wishes to terminate a pregnancy.").[17] In the year following Whole Woman's Health, two federal district courts have applied that standard to laws that the state claimed promoted

[16] In Casey, the Court considered whether a 24-hour waiting period imposed an undue burden. Finding that the mandatory delay had "troubling" effects and posed a "closer question" than other provisions, the Court nevertheless upheld the requirement based on insufficient evidence of burden "on the record before us," 505 U.S. at 887. As the Iowa Supreme Court recognized in Planned Parenthood of the Heartland, Casey clearly limited its holding so as not to imply that state-created travel burdens cannot amount to an undue burden in other contexts; indeed, in Planned Parenthood of the Heartland, the Court *did* find an undue burden based on the travel burdens an abortion restriction imposed.

[17] Although Planned Parenthood of the Heartland indicated in dicta that the precise federal test might vary depending on the asserted state interest, id. at 263–64, in fact Casey applied the same balancing test to provisions that purported to advance various interests, including the state's interest in fetal life. The U.S. Supreme Court recently recognized this in Whole Woman's Health, and summarized the "undue burden" standard as requiring generally that courts "consider the burdens a law imposes on abortion access together with the benefits these laws confer," Whole Woman's Health, 136 S. Ct. at 2309 (noting that Casey performed this balancing with respect to a spousal notification provision, and a parental notification provision).

its interest in fetal life, both finding that the laws failed this balance. See Planned Parenthood of Ind. & Ky., Inc. v. Comm'r, Ind. State Dep't of Health, 1:16-cv-01809-TWP-DML, 2017 WL 1197308, at *6 (S.D. Ind. March 31, 2017) (applying balancing test to law requiring women to obtain ultrasound 18 hours before abortion); Whole Woman's Health v. Hellerstedt (Whole Woman's Health II), 2017 WL 462400, at *7 (W.D. Tex. Jan. 27, 2017) (applying balancing test to law passed for the asserted purpose of "'expressing the State's respect for life'").

The U.S. Supreme Court also stressed in Whole Woman's Health that, in assessing the benefits as well as the burdens, a court must consider the actual evidence and not merely defer to legislative findings or the government's speculation. Whole Woman's Health, 136 S. Ct. at 2309 (it "is wrong to equate the judicial review applicable to the regulation of a constitutionally protected personal liberty with the less strict review applicable where, for example, economic legislation is at issue"); id. at 2311–12 (noting the absence of evidence demonstrating the existence of a problem the challenged statute would solve); cf. Planned Parenthood of the Heartland, 865 N.W.2d 252 (closely examining the evidence on safety and burden). As Planned Parenthood of the Heartland and other decisions explain, this inquiry is "context-specific" and turns on the evidence and record in the case. See id. at 268–69; Planned Parenthood of Ind. & Ky., Inc., 2017 WL 1197308, at *23 ("[T]he undue burden analysis is case specific.").

Here, the evidence is clear that the burdens imposed on patients by the Act's 72-hour delay and additional trip requirement plainly exceed any benefits. There is no evidence that women having abortions in Iowa have been unable to fully consider their options and give full and informed consent on the day their abortion procedure is

performed. Indeed, Iowa law already requires, consistent with PPH's medical guidelines, that women receive an ultrasound and give informed consent prior to their abortion. See Meadows Aff. ¶ 8 (patients are provided all information necessary for them to fully understand the risks and benefits of abortion, and the alternatives to abortion, including carrying the pregnancy to term). Nor is there any evidence that requiring a woman to receive the state-mandated information required by the Act 72 hours before her abortion advances any legitimate state interest. Grossman Aff. ¶ 5. This is particularly true given that most of PPH's patients have carefully thought through their options and are already firm in their decision by the time they reach the health center to have an abortion. Meadows Aff. ¶ 10; see also Grossman Aff. ¶ 26.

Not only is there no evidence that the Act would afford any benefits (in terms of persuading women to continue their pregnancy, as opposed to simply hindering them from accessing an abortion), but "there is no question the [Act] imposes some burdens that would not otherwise exist and did not exist before the [Act] was adopted," Planned Parenthood of the Heartland, 865 N.W.2d at 267, and the record demonstrates that these burdens are serious. In assessing burden, courts consider "the ways in which an abortion regulation interacts with women's lived experience, socioeconomic factors, and other abortion regulations." Planned Parenthood of Ariz. v. Humble, 753 F.3d 905, 915 (9th Cir. 2014) (internal quotation marks omitted); see also Planned Parenthood of Ind. & Ky., Inc., 2017 WL 1197308 at *20 (considering additional travel expenses, difficulty in procuring child-care, lost wages, potential loss of employment, and increased risk of disclosure of abortion to abusive partners in undue burden analysis). Courts also "consider evidence that a law delays and deters patients obtaining abortions, and that

delay in abortion increases health risks," Humble, 753 F.3d at 915 (internal quotation marks omitted); see also Parenthood of Ind. & Ky., Inc., 2017 WL 1197308 at *21 (considering evidence on availability of abortion appointments and informed consent appointments at "overburdened" Planned Parenthood health centers).

Applying this standard, the Act clearly imposes severe burdens on women seeking an abortion. The mandatory delay and additional trip requirement will require all women to make two visits to a health center a minimum of 72 hours apart—one visit to have an ultrasound and receive state-mandated information, and a second visit to obtain the abortion. As explained more fully in Part C, Factual Background, in reality, the Act will cause delays of greater than 72 hours for some women due to scheduling restraints that exist both on PPH and women seeking abortions. Meadows Aff. ¶ 27; see also Grossman Aff. ¶ 37 (citing research that mandatory waiting periods cause substantial delay beyond the specific period); Collins Aff. ¶ 44–49 (detailing how the Act will delay poor and low-income women, who will struggle to put together additional resources). These delays will threaten women's health, increase the cost of the procedure, and deny many women access to medication abortion, which in turn will pose additional barriers as more women will have to travel farther to access abortion. See above, Part C, Factual Background. For some women, the Act will mean they cannot access abortion at all. Id.

Other courts have recognized that impeding women's access to abortion in these ways imposes an undue burden. See, e.g., Parenthood of Ind. & Ky., Inc., 2017 WL 1197308 at *20 (considering evidence on availability of abortion appointments and informed consent appointments at "overburdened" Planned Parenthood health centers); Humble, 753 F.3d at 915 (recognizing that state restrictions affecting "the supply of

abortion providers and clinics can, at some point, constitute a substantial obstacle to a significant number of women" and describing harms of delaying an abortion); id. 753 F.3d 905 (holding a law that effectively denies some women a medication abortion imposed an "undue burden").

Indeed, the Iowa Supreme Court has already recognized that increased travel distances and an additional trip to a clinic can "cause a working mother to potentially miss two to four days of work and incur additional childcare expense," and can result in "a greater possibility that an abusive spouse, partner, or relative could find out the woman is terminating her pregnancy." Planned Parenthood of the Heartland, 865 N.W.2d at 267. The Act will similarly burden women—imposing additional travel costs for extra gas money or public transportation to get to the health center a second time, potential hotel costs for multiple nights for those women who cannot make two separate trips to the health center, as well as increased costs for the procedure necessitated by the additional staff and clinician time required to comply with the Act. Meadows Aff. ¶¶ 16, 27; Collins Aff. ¶¶ 19–52 (outlining burdens specific to poor and low-income women); Walker Aff. ¶¶ 18–29 (outlining burdens specific to women who have suffered or are at risk of sexual violence and/or intimate partner violence).

For all of these reasons, like the telemedicine abortion ban recently struck down by the Iowa Supreme Court in Planned Parenthood of the Heartland, the Act "places an undue burden on a woman's right to terminate her pregnancy," id., 865 N.W.2d at 269, because there is no evidence that it actually advances any valid state interest and because it unquestionably will make it "more challenging for many women who wish to exercise

their constitutional right to terminate a pregnancy in Iowa to do so." Id. at 268.[18]

ii. The Act also violates women's equal protection rights under the Iowa Constitution.

For substantially the same reasons as those set forth in Part B.i., Argument, the Act violates the equal protection rights of women seeking an abortion because it singles them out for burdensome restrictions not imposed on patients seeking any other form of health care, including procedures with far greater risks and those for which patients express similar or higher rates of uncertainty before proceeding. See Grossman Aff. ¶ 28 (citing research showing that abortion patients are equally or more certain in their decision than patients seeking various other forms of care); see also Planned Parenthood of the Heartland, 865 N.W.2d at 269 (recognizing that where the Board of Medicine had taken steps to facilitate the use of telemedicine in accordance with "evidence-based" standards, but sought to restrict telemedicine for abortion, "'[a]n issue of equal protection of the laws is lurking in this case'" (quoting Planned Parenthood of Wis., Inc. v. Van Hollen, 738 F.3d 786, 790 (7th Cir. 2013)).

As set forth in Part B.i(a), Argument, abortion is a fundamental right, and therefore the correct standard of review of Petitioners' equal protection claim is strict scrutiny. See, e.g., In re Det. of Williams, 628 N.W.2d at 452 (holding strict scrutiny applies under Iowa Constitution when fundamental rights are at stake; under strict scrutiny, a statute is "not presumed constitutional," rather "the State carries the burden of

[18] In addition to all the harms recognized as substantial and undue in Planned Parenthood of the Heartland, the Act further harms women by shaming them, indicating that they are not equipped to understand or make decisions about their own pregnancy and are wrong to seek an abortion. See above, Part C, Factual Background; cf. Humble, 753 F.3d at 915 (undue burden standard includes consideration of whether a state restriction "stigmatiz[es] . . . abortion practice").

showing that the classification is narrowly tailored to serve a compelling government interest"); see also Varnum, 763 N.W.2d at 880; Sanchez, 692 N.W.2d at 817.

Alternatively, even if this Court were to conclude that abortion is not a fundamental right under the Iowa Constitution, the Act's requirements would still be subject to intermediate scrutiny because they facially discriminate against women. Varnum, 763 N.W.2d at 880 (sex-based classifications subject to intermediate scrutiny); see Quaker Oats Co. v. Cedar Rapids Human Rights Comm'n, 268 N.W.2d 862, 866–67 (Iowa 1978) ("[A]ny classification which relies on pregnancy as the determinative criterion is a distinction based on sex." (citation and internal quotation marks omitted)), superseded by statute on other grounds, Iowa Code § 216.29 (2011); see also N.M. Right to Choose/NARAL v. Johnson, 975 P.2d 841, 854 (N.M. 1999) (treating abortion restriction as gender-based and applying heightened scrutiny because "[s]ince time immemorial, women's biology and ability to bear children have been used as a basis for discrimination against them" (citation omitted)); cf. Casey, 505 U.S. at 856 (access to legal abortion is necessary to enable women "to participate equally in the economic and social life of the Nation"). Not only does the Act single out women by requiring a mandatory delay and two-trip requirement for a medical procedure that is only available to women, but the Act also perpetuates the damaging stereotype that women are not reasonable, competent decision-makers. Cf. Sundquist, 38 S.W.3d at 23 (in due process context, agreeing that mandatory delay law "insults the intelligence and decision-making capabilities of a woman" and finding law violated state constitution).

Under the intermediate scrutiny standard, "the challenged classification [must be] substantially related to the achievement of an important governmental objective."

Varnum, 763 N.W.2d at 880. In applying this standard, "the reviewing court must determine whether the proffered justification is exceedingly persuasive," and the court should "scrutinize the means used to achieve that end" and, in particular, "drill down" on the connection between the classification and asserted adjective. Id. at 897 (internal quotation marks omitted). In addition, the burden of justifying the Act is "demanding and it rests entirely on the *State*." Id. (internal quotation marks omitted and emphasis added).

For the same reasons stated above, Part B.i(c), Argument, the state's asserted interest in potential life cannot be recognized as a "compelling" or "important" interest, or at the very least not as one that the government may advance by intruding to such a degree on women's decision-making.[19] And, for the same reasons set forth in Part B.i(b), Argument, even if the Iowa Constitution permitted Respondents to intrude in such a personal decision, the evidence in this case demonstrates that the means Respondents have chosen are not "substantially tailored" to such an interest because they apply to all patients indiscriminately and do so in a way that shames women and severely burdens access to constitutionally-protected medical care. See Varnum, 763 N.W.2d at 901 ("[A] law so simultaneously over-inclusive and under-inclusive is not substantially related to the government's objective.").

Thus, this Court should find that Petitioners are likely to succeed in demonstrating

[19] While federal courts have recognized the state's interest in potential life (although they have not recognized it as compelling), that does not begin to answer the question of whether, under the Iowa Constitution, it is sufficiently strong to satisfy a heightened scrutiny standard. See State v. Ochoa, 792 N.W.2d 260, 267 (Iowa 2010) (because of "independent nature of our state constitutional provisions . . . [t]he degree to which we follow United States Supreme Court precedent . . . depends solely upon its ability to persuade us with the reasoning of the decision"). Indeed, "social and moral concerns [including 'unique potentiality of human life'] have no place in the concept of informed consent." Gainesville Woman Care, 210 So. 3d at 1262; see generally Part B.i(b).

that the Act violates their patients' equal protection rights.

C. Petitioners and their patients will be substantially injured if this Court does not enjoin Respondents from enforcing the Act, and the balance of hardships warrants injunctive relief.

In addition to demonstrating that Petitioners are likely to succeed on the merits of their petition, the record also demonstrates that Petitioners and their patients will be substantially injured if the Act is enforced. See Ney v. Ney, 891 N.W.2d 446, 451 (Iowa Mar. 10, 2017) (district court may issue an injunction when "substantial injury will result from the invasion of the right or if substantial injury is to be reasonably apprehended to result from a threatened invasion of the right").

As an initial matter, the Act's requirements will irreparably harm Petitioners' patients by violating their constitutional rights: "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)); Ezell v. City of Chicago, 651 F.3d 684, 699 (7th Cir. 2011) (infringement of constitutional rights by facially invalid law causes irreparable harm) (citing 11A Charles Wright et al., Practice & Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")).

As outlined in more detail above, the mandatory delay and additional-trip requirements will also irreparably harm women by delaying them from accessing care, which will also expose them to increased medical risk, potentially increased costs, and in some cases deprive them of the option of a medication abortion (or any option whatsoever). These requirements will also burden women with increased travel distances, costs, and stress. It is unlikely that PPH can comply with the Act without scheduling

patients much further out and charging patients more for an abortion. Vulnerable groups of women will be injured most severely by these requirements, including low-income women, which make up the majority of PPH's abortion patients (who are at or below 110% of the federal poverty line), victims of rape, incest, or domestic abuse, women who have received a diagnosis of a severe fetal anomaly, and women with medical conditions that threaten their health but who do not fall into the narrow medical emergency exceptions stipulated in the Act. In subjecting women to these harms, the Act will also irreparably harm Petitioners by preventing them from providing timely, patient-centered care. Meadows Aff. ¶¶ 12, 31.

These harms are more than sufficient to meet the standard for temporary injunctive relief. See, e.g., Emma Goldman Clinic v. Holman, 728 N.W.2d 60 (Table), *6 (Iowa Ct. App. 2006) (injunction necessary "to protect the plaintiffs and the clinic's patients and staff from harm"); Planned Parenthood of Mid-Iowa v. Maki, 478 N.W.2d 637, 640 (Iowa 1991) (injunction necessary to protect "Planned Parenthood's right and ability to conduct its business"); Van Hollen, 738 F.3d at 795; Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. Unit. B Nov. 1981) (an infringement on a woman's constitutional right to have an abortion "mandates" a finding of irreparable injury because "once an infringement has occurred it cannot be undone by monetary relief"); Roe v. Crawford, 396 F. Supp. 2d 1041, 1044 (W.D. Mo. 2005) (delay in obtaining abortion procedure "may cause Plaintiff substantial injury, exposing her to increased medical, financial, and psychological risks"), stay of injunction denied, 546 U.S. 959 (2005).

Furthermore, weighing the relative harms of the parties further supports a grant of

temporary injunctive relief. While Petitioners and their patients will be severely harmed by the Act's requirements, Respondents will not suffer any harm from Petitioners' patients' continuing to receive care without mandatory delay, as they have for over 40 years. Petitioners' existing informed consent process is consistent with current best medical practices, requirements under Iowa law prior to the Act, and informed consent processes for medical procedures with a comparable degree of risk. Thus, as abortion patients in Iowa are already capable of providing informed and voluntary consent, the Act's requirements provide no benefit whatsoever and Respondents will not be harmed by being unable to temporarily enforce the Act. See Am. Civil Liberties Union v. Johnson, 194 F.3d 1149, 1163 (10th Cir. 1999) ("[T]hreatened injury to [constitutional rights] outweighs whatever damage the preliminary injunction may cause Defendants' inability to enforce what appears to be an unconstitutional statute.") (citation omitted); Saint v. Neb. Sch. Activities Ass'n, 684 F.Supp. 626, 628 (D. Neb. 1988) (no harm to defendant in losing the ability to enforce unconstitutional regulations).

D. There is no adequate legal remedy available.

Finally, Petitioners are entitled to an injunction because they have no adequate legal remedy. See Ney, 891 N.W.2d, at 452 (there is no adequate legal remedy "if the character of the injury is such that it cannot be adequately compensated by damages at law") (internal quotation marks omitted). The Act will cause women subject to its mandates grievous injuries, including delaying or preventing them from terminating an unwanted pregnancy. Such injuries cannot later be compensated by damages.

CONCLUSION

WHEREFORE, Petitioners pray this Court grant their Motion for Temporary

Injunctive Relief and enjoin Respondents from enforcing the Act's mandatory delay and additional trip requirements.

Respectfully submitted,

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